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ATTORNEYS FOR PLAINTIFF

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION**

DONNA GARCIA,	CIV. NO. 11-1253 EMC
Plaintiff,	<b>MOTION FOR ADMINISTRATIVE</b>
vs.	<b>RELIEF REQUESTING AN ORDER</b>
RESURGENT CAPITAL L.P., LVNV	<b>EXTENDING DEADLINE FOR</b>
FUNDING, LLC, THE BRACHFELD LAW	<b>PLAINTIFF TO FILE REPLY BRIEF and</b>
GROUP, P.C.,	<b>[Proposed] ORDER</b>
Defendants.	HON. EDWARD CHEN

On May 8, 2012, the Court issued an Order requiring Defendants to make an initial settlement payment (\$50,000), and for Plaintiff to file a Motion for Reasonable Attorney's Fees and Costs.

On May 21, 2012, the Court entered the parties' stipulation to extend the deadline for the fee motion to June 1, 2012. Dock# 126. We hoped to resolve this matter informally.

**MOTION FOR ADMINISTRATIVE RELIEF REQUESTING AN ORDER EXTENDING DEADLINE FOR PLAINTIFF TO FILE REPLY BRIEF and [Proposed] ORDER**

1 On May 25, 2012, Plaintiff voluntarily produced to Defendants Plaintiff counsel's  
2 itemized billing records in an effort to try to resolve the matter even before filing any motion.

3 On May 31, the Court entered the parties' second stipulation to extend the deadline for  
4 the fee motion to June 8, 2012. Dock #128.

5 On June 7, 2012, Plaintiff filed the fee motion since the parties not informally resolve the  
6 matter. With the additional lead time of having Plaintiff's itemized billing records nearly two (2)  
7 full weeks before the motion was filed, and another two (2) weeks pursuant to Local Rules 9 for a  
8 total of four (4) weeks, Defendants prepared and filed an opposition (with attachments) that  
9 exceeds one-hundred and twenty (120) pages, including sixty-three (63) pages of challenges to  
10 itemized billing records.

11 On the morning of June 22, 2012, Plaintiff received Defendants' submissions and  
12 opposition to the fee motion that were filed June 21, 2012. I telephoned Defendants' counsel  
13 David Dalby and Jon Birdt. I left a voice mail for Mr. Dalby, and spoke to Mr. Birdt, requesting  
14 an extension of time to file a reply brief. I spoke on the phone to Mr. Birdt, who rejected my  
15 request and hung up on me!<sup>1</sup>

16  
17 The parties disagree over what has occurred in settlement negotiations. Regardless,  
18 Plaintiff simply requests a brief extension of eight (8) days so we can address this matter on the  
19 merits.

20 Following the submission of the motion I learned I will be out of state for nearly the  
21 entire month of July, this has caused me to juggle a great number of pressing tasks (including  
22 preparing for a trial and addressing a Motion for Summary Judgment). Furthermore, my co-  
23 counsel just returned from being out of the office for ten (10) days. Additionally, I am informed

24  
25 <sup>1</sup> Mr. Birdt confirmed in an email he did indeed hang up on me (it is not attached since it contained confidential settlement communications, which were also mischaracterized. Mr. Dalby followed with an e-mail that the communications need to be directed to Mr. Birdt.

1 he has another matter before this Court which has sixteen (16) Plaintiffs in (14) cases, who need  
 2 to be met with and properly advised regarding an upcoming Settlement Conference with Judge  
 3 Spero, and he is also dealing with voluminous discovery that was served on the Plaintiffs in that  
 4 matter (with up to sixty (60) Requests for Production for one Plaintiff, and seventy-one (71)  
 5 Requests to Admit for one Plaintiff).<sup>2</sup>

6 Mr. Birdt did not state how the brief extension would create any prejudice. Indeed, there  
 7 is none, since Plaintiff's reply brief would be filed July 6, 2012, twenty-one days (21) before the  
 8 motion is heard on July 27, 2012 (a date the parties stipulated to in order to accommodate  
 9 Defendant LVNV's counsel's other pressing legal matters (see Dock# 138, 3:18-21)). The  
 10 extension would still require that a reply brief be filed a full 7 days before the reply would have  
 11 been due under the previous L.R. 7-3 (requiring 14 days before the hearing).

12 Respectfully,

13 Dated: 6/25/12

14 /s/Paul H. Nathan

15 PAUL H. NATHAN  
 16 Counsel for Plaintiff

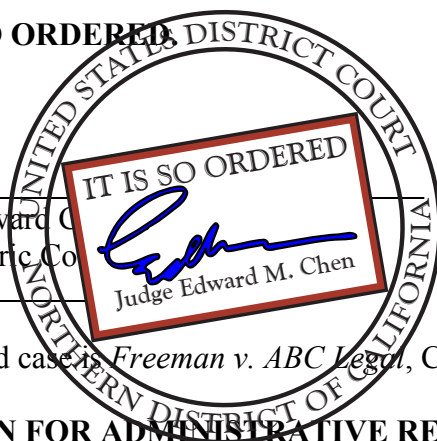
17 ~~[Proposed]~~ ORDER

18 For good cause, Plaintiff's motion is granted. Plaintiff shall file any reply by July 6, 2012.

19 **IT IS SO ORDERED.**

20 Date:

21 Hon. Edward C.  
 22 U.S. District Co



23  
 24  
 25 <sup>2</sup> The lead case is *Freeman v. ABC Legal*, CV-11-03007 EMC (N.D. Cal. 2011).

**MOTION FOR ADMINISTRATIVE RELIEF REQUESTING AN ORDER EXTENDING  
 DEADLINE FOR PLAINTIFF TO FILE REPLY BRIEF and [Proposed] ORDER**